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34645	7590	06/30/2008		
Anderson Gorecki & Manaras, LLP			EXAMINER	
Attn: John C. Gorecki			PATEL, AJIT	
P.O BOX 553				
CARLISLE, MA 01741			ART UNIT	
			PAPER NUMBER	
			2616	
			NOTIFICATION DATE	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/736,108

Applicant(s)

MANCOUR, TIMOTHY

Examiner

AJIT G. PATEL

Art Unit

2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13-20 is/are rejected.
- 7) ☒ Claim(s) 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

1. The applicant requested the examiner to reconsider the restriction requirements of the last office action is persuasive and therefore, the restriction requirement of that action is withdrawn.
2. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 3, It is not clear what is meant by an address at least one capability of the network construct. Same error appears in claim 8.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-11, 13-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Holmgren et al (U.S. Pub. 2004/0165595).

Regarding claims 1, 19, Holmgren et al disclose a discovery and integrity testing method in an Ethernet domain incorporating the steps of generating a protocol data unit that contains as an address at least one capability of the network construct (MAC DA or MAC SA in figs. 2A,2B)); and issuing the protocol data unit onto the communication network (para. 0019)

Regarding claims 2,9, Holmgren et al disclose wherein the address is a destination address (MAC DA in figs. 2A,2B).

Regarding claim 3, Holmgren et al disclose wherein the destination address is a destination Media Access Control (MAC) address (MAC DA in figs. 2A,2B).

Regarding claim 4, Holmgren et al disclose wherein the network construct is a provider edge network element, and wherein the capability is specific to provider edge network elements (para. 0024, lines 1-7).

Regarding claim 6,20, Holmgren et al disclose the step of listening for a reply to the protocol data unit from the communication network (para. 0027).

Regarding claim 7, Holmgren et al disclose wherein receipt of a reply indicates the presence of the network construct on the communication network (para. 0027).

Regarding claim 8, Holmgren et al disclose the step of filtering protocol data units to identify protocol data units that contain as an address at least one capability (it is noted that when the receiver receives the PDU, it must filter in order to identify the address).

Regarding claims 9,13, Holmgren et al disclose wherein the at least one capability matches a capability of the network construct (para.0023).

Regarding claim 11, Holmgren et al disclose wherein the protocol data unit contains a source Media Access Control (MAC) address and a destination MAC

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address, and wherein the address is at least one of the source MAC address and the destination MAC address (see fig. 2A,2B).

Regarding claim 13, Holmgren et al disclose the step of responding to the protocol data unit (para. 0027).

Regarding claim 14, Holmgren et al disclose wherein the step of responding comprises generating a response protocol data unit and sending the response protocol data on the communication network (para. 0027).

Regarding claim 15, Holmgren et al disclose flooding a protocol data unit addressed to the first capability on the communication network (para. 0024; and listening for a response to the protocol data unit (see response in para. 0024).

Regarding claim 16, Holmgren et al disclose wherein the protocol data unit is an Operation Administration and Maintenance (OAM) packet in an OAM flow (see OAM in para. 0024).

Regarding claim 18, Holmgren et al disclose wherein the step of flooding comprises at least one of broadcasting and multicasting to cause the protocol data unit to be forwarded throughout a domain on the communication network see multicast or broadcast in para. 0024).

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holmgren et al in view of Benedetto et al (U.S.Pub. 2005/0259597).

Regarding claim 5, 17, Holmgren et al disclose all the claimed subject matter as described in previous paragraph except wherein the network construct is a port of a particular type on a network element, and wherein the capability is specific to that type of port and the protocol data unit is a hello message. Benedetto et al disclose multiple instance spanning tree protocol comprising wherein the network construct is a port of a particular type on a network element, and wherein the capability is specific to that type of port ((454 of fig. 4B) and the protocol data unit is a hello message (460 of fig. 4B). Therefore, it would have been obvious to one skilled in the art to use the teaching of Benedetto et al in the system of Holmgren et al in order to create loop free path in a spanning tree.

7. Claim 12 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to AJIT G. PATEL whose telephone number is 571-272-3140. The examiner can normally be reached on MONDAY- FRIDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doris TO can be reached on 571-272-7629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/AJIT G. PATEL/
Primary Examiner, Art Unit 2616